

TALKING POINTS
FMM – Emergencies Act
February 14th 2021

- Prime Minister, Premiers, it is an honour for me to provide you with information on the federal *Emergencies Act* as it pertains to the ongoing protests in Ottawa and elsewhere in Canada.
- We are considering invoking the *Emergencies Act* to supplement Provincial and Territorial authorities to address the blockades and occupation.
- Ces mesures ne déplaceraient ni ne remplaceraient vos pouvoirs ; notre but ici serait d'ajouter des pouvoirs que vos services de police pourraient utiliser ainsi que la GRC. De plus, ces mesures ne dérogeraient pas et, compte tenu de l'article 20 de la Loi, ne peuvent déroger à votre pouvoir de diriger vos forces policières. Notre intention est d'aider à mettre un terme aux activités illégales que nous avons constatées partout au pays.
- I want to provide a little background on the *Emergencies Act*. It was enacted in 1988 and replaced the *War Measures Act*. In response to significant concerns raised about measures used under the *War Measures Act*, the *Emergencies Act* differs from its predecessor in two important ways: 1) it contains several safeguards, including Parliamentary review; and 2) any measures taken under the Act are

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subject to the *Charter*.

- The purpose of the *Emergencies Act* is to authorize the taking of special temporary measures to ensure the safety of Canadians during a national emergency.
- It is intended to fill gaps in legislative authorities at the federal and provincial level needed during an emergency.

Requirements for Invoking the Act

- Avant que des mesures puissent être prises en vertu de la *Loi sur les mesures d'urgence*, nous devons être en présence d'une urgence nationale.
- For a situation to be qualified as a *national emergency*, three conditions must be met: (s.3)
 - First we must be in a situation that either:
 - (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
 - (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada; and

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- **Second, the provinces and territories' capacity to handle the situation must be considered insufficient or showing gaps; and**
 - **And third, we must conclude that the situation cannot be handled adequately under any other act of Canada, including those of the provinces and territories.**
- **Ces conditions démontrent que la *Loi sur les mesures d'urgence* doit être utilisée avec parcimonie, en dernier recours.**
 - **Once an emergency has been declared, the *Emergencies Act* permits orders or regulations (s.19) to be made in a wide range, albeit specifically enumerated areas, as necessary for dealing with the emergency.**
 - **However, it is important to note that the *Emergencies Act* does not require that all available powers be used. An emergency could be declared, and the federal government might choose to invoke only a few of the listed powers. In addition, during the emergency, we can add additional orders to address emerging threats.**

Safeguards

- **There are a number of significant limits, checks and safeguards that are built into the Act:**

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- **Most significantly, as you know, there are requirements for consultations with all of you (s.25), a requirement to table the declaration in Parliament within 7 days of the Declaration (s.58)); parliamentary committee oversight while the emergency is in effect, and a 30-day sunset clause if the emergency is not continued and reconfirmed. A public inquiry must be held once the emergency is over (s. 63).**

FPT Consultations

- **As noted, the *Emergencies Act* (s.25) requires consultations with you in relation to the action the federal government proposes to take.**
- **Under a public order emergency, consultations can be completed up to 7 days after declaration. While there have already been many discussions with some of you and your Ministers, this session today will also form part of the consultation required under the Act.**
- **We want to ensure that the federal response complements the efforts that your governments and local municipalities continue to make to bring stability to the nation.**

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Considerations regarding reliance on the *Emergencies Act*

- **While we want to recognize the hard work done to date by law enforcement, we also recognize that the novel and organized tactics being employed by the protesters continue to present resourcing and enforcement concerns for our law enforcement agencies. As Provincial and municipal efforts will continue, these federal measures would complement yours.**
- **Nous tenons à souligner que les mesures sont limitées dans le temps à 30 jours. S'ils doivent être renouvelés, nous vous consulterons à nouveau. Nous espérons que cela ne sera pas nécessaire et que l'ordre sera rétabli.**
- **Nous croyons que les mesures ciblées que nous proposons répondront à une situation urgente et critique tout en respectant la démocratie, le gouvernement responsable, la primauté du droit et le fédéralisme, de manière à renforcer plutôt qu'à affaiblir la confiance du public dans nos institutions.**
- **Nous sommes convaincus que ces mesures supplémentaires sont nécessaires pour rétablir l'ordre respectueux et la primauté du droit.**

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Charter

- **Any steps taken by the Government under the Emergencies Act must be consistent with the Canadian Charter of Rights and Freedoms. If a measure under the Emergency Act limits a Charter right, it must be reasonable and proportionate to the threats to the security of Canada it is meant to address.**
- **Nous traversons une période extraordinaire et le gouvernement du Canada s'est engagé à respecter et à protéger les droits individuels tout en préservant l'ordre public. Cela comprend toutes les mesures prises par le gouvernement du Canada en vertu de la Loi sur les mesures d'urgence, y compris les ordres ou les actions des représentants du gouvernement.**

Measures

- **Our conversations with you and municipal leaders have led us to believe that the following six measures are needed to bring this matter under control:**
 - **Regulation and prohibition of public assemblies that lead to a breach of the peace and go beyond lawful protest. What we are seeing in Ottawa and at the Ambassador Bridge are not lawful protests;**
 - **Designating and securing places where blockades are to be prohibited (this could include borders, approaches to borders, other critical infrastructure, Ottawa);**

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- **Directing persons to render essential services to relieve impacts of blockades on Canada's economy (this could include tow trucks and their drivers, for compensation);**
- **Authorizing or directing financial institutions to render essential services to relieve impact of blockades, including regulating and prohibiting the use of property to fund or support the blockades ;**
- **Measures enabling the RCMP to enforce municipal by laws and provincial offences where required; and**
- **The imposition of fines of imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act***

Timelines and Process

- **The orders and regulations can be made at the same time as the issuance of a declaration.**
- **Orders and regulations must be tabled in each House of Parliament within two sitting days after they are made.**
- **A motion for confirmation of a declaration of emergency must be laid before each House of Parliament within seven sitting days after the declaration is issued. The motion must include the Declaration, an explanation of the reasons for declaring the emergency and a report our consultations.**

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- **La Déclaration est en vigueur pendant 30 jours à moins qu'elle ne soit révoquée par le Parlement ou le gouverneur en conseil.**
- **As I noted earlier, the GiC can extend the declaration for an additional 30 days but must consult again with all of you before doing so. The extension is also subject to confirmation in Parliament.**
- **I hope this information is helpful. J'accueillerais toutes les questions que vous pourriez avoir. Notre espoir est que cela rétablira un ordre effectif et l'état de droit.**

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